

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

This Document Relates to:

Civil Action No. 0:16-cv-
03062-JNE-FLN

ANIETA A. MOSES

VS.

3M COMPANY AND ARIZANT
HEALTHCARE, INC.

**DECLARATION OF D. WAYNE ROGERS, JR. IN SUPPORT OF
PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

I, D. Wayne Rogers, Jr. declare as follows:

1. I am an attorney at DeGaris & Rogers, LLC and our firm is Counsel for Plaintiff Aneita Moses in the above-captioned matter.
2. I submit this affidavit in opposition to the Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order 14 filed on September 7, 2017.
3. I prepared and sent the three letters attached hereto as Exhibits A (dated February 9, 2017), B (dated March 29, 2017) and C (dated May 15, 2017).
4. As noted in the attached letters, the information required by Pretrial Order 14 has been available to the Defendants since February 9, 2017, and an updated Verification was sent to the Defendants along with the letter of that date.
5. As noted in the letter of May 15, 2017, attached hereto as Exhibit C hereto, we re-served the Plaintiff's Fact Sheet ("PFS") in May 2017 in order to insure that the Defendants received the PFS in its entirety, while maintaining that the information had been properly provided to the Defendants by February 9, 2017.
6. No substantive changes have been made in the PFS following the February 9, 2017 letter.
7. In an effort to insure that everything had been properly provided to the Defendants, Plaintiff updated her Verification, dated August 15, 2017.
8. When the portal for the PFS was changed in early September 2017, our office had some technical difficulties getting into the new portal. Those difficulties were remedied today, on September 15, 2017.

9. Thereafter, we immediately uploaded the updated Verification into the Portal.

Pursuant to 28 U.S.C. Section 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 15, 2017

/s/ D. Wayne Rogers, Jr.
D. Wayne Rogers, Jr.



February 9, 2017

VIA EMAIL AND U.S. MAIL

Benjamin W. Hulse
Blackwell Burke P.A.
431 South Seventh Street, Suite 2500
Minneapolis, MN 55415
bhulse@blackwellburke.com

RE: *In re Bair Hugger Forced Air Warming Devices Products Liability Litigation*
MDL No. 2666 – Deficiencies in Plaintiff Fact Sheet for Individual Case
Moses v. 3M Company et al, Case No.: 0:16 -cv-03062-JNE-FLN

Dear Counsel

We refer to your PFS deficiency report dated January 20, 2017 and respond as follows:

Section II (PERSONAL INFORMATION): In regard to question 1 of Section II, the Plaintiff's middle name is Antoinette. The Plaintiff does not remember the exact dates that the other names listed in the answer to question 1.b. were used, but they were used during her previous marriages.

Section III (SURGERY INFORMATION):

We are unable to determine from the portal which deficiencies in Section III question that Counsel is requiring to be cured, as complete answers appear to have been provided to call questions in that section, including Question 3. Please specify which portions of those questions you allege were not properly answered.

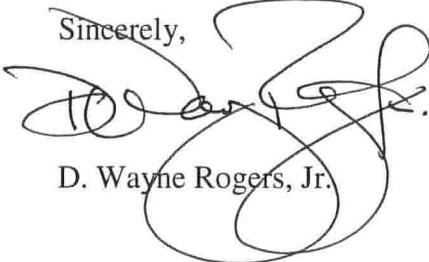
Section IV (DENTAL PROCEDURES): Plaintiff answers "N/A" as the question is not applicable to her and she had no such dental procedures.

X.01 (SIGNED AUTHORIZATION): Please find enclosed signed authorization.

X.02.D (DOCUMENTS – SIGNED VERIFICATION): Please find enclosed signed verification.

Thank you for your attention to this matter, and do not hesitate to contact me if you have any questions. I can be reached at (205) 558-9000 or by email at wrogers@degarislaw.com.

WR/cd
Enclosures.

Sincerely,

D. Wayne Rogers, Jr.



March 29, 2017

VIA EMAIL AND U.S. MAIL

Benjamin W. Hulse
Blackwell Burke P.A.
431 South Seventh Street, Suite 2500
Minneapolis, MN 55415
bhulse@blackwellburke.com

**RE: *In re Bair Hugger Forced Air Warming Devices Products Liability Litigation*
MDL No. 2666 – Deficiencies in Plaintiff Fact Sheet for Individual Case
Moses v. 3M Company et al, Case No.: 0:16 -cv-03062-JNE-FLN**

Dear Mr. Hulse,

We refer to your PFS deficiency letter, dated March 8, 2017 and respond as follows:

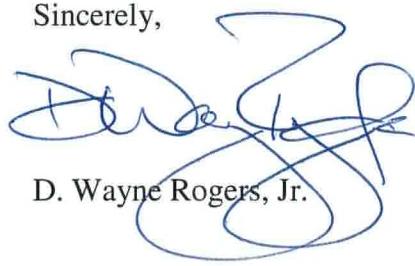
We dispute the deficiencies listed in your letter for the reasons set forth below.

The attachment to your letter suggests that Section III (Surgery Information) is “incomplete” in that “several questions [are] still not answered, including height/weight, pre-existing medical conditions, [and] prior infections”. As a preliminary matter, Section III does not include such questions. Section III involves questions related to the subject surgery and the questions you list in your letter are not included in that section.

If indeed you refer to certain questions in Section IV of the PFS regarding height/weight, etc., a review of the Portal in which the PFS was submitted reveals that all such questions have in fact been answered, including those you mention in your letter. We are thus at something of a loss to determine what information you seek that has not been provided. Thus, we would ask that you review the PFS again and let us know specifically which questions have not been answered. Those mentioned in your letter of March 8 have been answered as best we can determine.

Thank you for your attention to this matter. If you have any questions or need a further response from us, we can be reached at (205) 558-9000 or by email at wrogers@degarislaw.com.

Sincerely,



A handwritten signature in blue ink, appearing to read "D. Wayne Rogers, Jr."

D. Wayne Rogers, Jr.

DWR



May 15, 2017

VIA EMAIL AND U.S. MAIL

Benjamin W. Hulse
Blackwell Burke P.A.
431 South Seventh Street, Suite 2500
Minneapolis, MN 55415
bhulse@blackwellburke.com

RE: *In re Bair Hugger Forced Air Warming Devices Products Liability Litigation*
MDL No. 2666 – Deficiencies in Plaintiff Fact Sheet for Individual Case
Moses v. 3M Company et al, Case No.: 0:16 -cv-03062-JNE-FLN

Dear Mr. Hulse,

We refer to your PFS deficiency letter, dated April 24, 2017 and respond as follows:

We note that in our prior letter of March 29, 2017, we had stated that it appeared to us from a review of the Portal that all the questions complained of had in fact been answered. This remains true today; however, we believe that there was an error within the Portal that caused the served copy of the PFS to leave out the information you had requested then, and have now requested again in your letter of April 24, 2017. We have now made efforts to correct this error within the Portal, by re-serving the PFS on you. We are not entirely sure that this will work, but are hopeful that the error may now be corrected. Again, from our view in the Portal, all questions have been answered, but we are not sure that the version you received has all of that information in it.

If this does not correct the problem, please let us know and we will make further efforts to get the information to you. We have tried to call your office on several occasions to discuss this matter, but have been unable to get anyone on the phone and have not gotten a call back.

Thank you for your attention to this matter. If you have any questions or need a further response from us, we can be reached at (205) 558-9000 or by email at wrogers@degarislaw.com.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Wayne Rogers, Jr."

D. Wayne Rogers, Jr.

DWR